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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 FRED HULAC, KATHY FINGARSON ) **CV** ) **CASE NO 08** )  
12 RAUL ARMENDARIZ, GLENORA ) )  
13 SPINKS, WILLIAM STEWART ) )  
14 and all those similarly ) )  
15 situated ) )  
16 ) **COMPLAINT** )  
17 ) )  
18 ) **DEMAND FOR JURY TRIAL** ) **JL**  
19 )  
20 )  
21 )  
Plaintiffs, )  
vs. )  
FEDERAL EXPRESS )  
CORPORATION )  
Defendant. )

## INTRODUCTION

23 1. This suit is brought by eighty-seven current and  
24 former employees of the Defendant Federal Express Corporation to  
25 enforce and secure their rights and the rights of other similarly  
26 situated older employees under the Age Discrimination in  
27 Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.*, and the  
28 California Fair Employment and Housing Act, Cal. Gov't. Code

1 §12940, et seq. They seek injunctive relief that prohibits the  
2 employment practices of the Defendant Federal Express Corporation  
3 ("FedEx") from using employment practice that discriminate  
4 against its older couriers/handlers, customer service agents and  
5 other hourly employees.

### **JURISDICTION**

7           2.           This Court has jurisdiction over this case under  
8 29 U.S.C. § 626(c) and 28 U.S.C. § 1331, § 1337 and § 1367.

## **VENUE**

10

11                   Venue in this District is appropriate under the ADEA, 29  
12 U.S.C. § 626(c).   Venue of the FEHA is appropriate under Cal.  
13 Gov't. Code § 12965(b)et seq.

## PARTIES

15       3.    Defendant Federal Express Corporation ("FedEx" or  
16 "Defendant") is a corporation engaged in the transportation of  
17 packages by air and by ground throughout the United States.

18       4.    Defendant is an employer within the definition and  
19 coverage of 29 U.S.C. § 630(b) of the ADEA, the Cal. Gov't. Code  
20 § 12900 of the FEHA, and other state laws prohibiting age  
21 discrimination.

22       5. Each Plaintiff is or was employed by the Defendant as a  
23 courier, operations manager or in another hourly paid position.  
24 Each Plaintiff is 44 years of age or older. Each Plaintiff has  
25 ten or more years of employment with Defendant.

1       6. FedEx terminated or forced to quit Plaintiffs listed on  
2 the graph below and in Appendix A under false allegations of  
3 falsification of a delivery, misconduct or failure to report an  
4 accident, under FedEx Acceptable Conduct Policy 2-5.

5       7. Plaintiffs had their stops per hour raised to almost  
6 unattainable numbers but when they made the stops per hour they  
7 were accused of falsifying and were terminated while couriers and  
8 other employees under 40 were not terminated for the same  
9 actions. The Plaintiffs are listed in the chart below with the  
10 state in which the Plaintiff worked, the Plaintiff's name, the  
11 alleged conduct that brought termination by FedEx, age at  
12 termination, years of service (YOS) with FedEx and the year FedEx  
13 terminated the Plaintiff:

<b>State</b>	<b>Plaintiff</b>	<b>Alleged Conduct</b>	<b>Age</b>	<b>YOS</b>	<b>Year Terminated</b>
<b>Employed</b>					
California	Fred Hulac,  Glendora Spinks	Falsification  Displaced; unable to lift 70 lbs after returning to work from an injury	54  52	22  14	1/9/07  4/21/05
Colorado	Lori Bernstein	Displaced; unable to lift 70 lbs after returning to work from injury and given a bulk route	44	22	4/4/06
Connecticut	Delno Clark	Falsification	48	21	
Arizona	Raul Armendariz	Falsification	50	21	12/21/06

	Plaintiff	Alleged Conduct	Age	YOS	Year Terminated
Florida	John Pellegren	"Horsing Around" Policy 2-5	53	13	5/20/07
	Susan Elins	Falsification Policy 2-5	46	12	1/2008
	Peggy Whitman	Falsification Policy 2-5	51	20	11/12/07
	Romas Jasiulevicius	Falsification Policy 2-5	45	20	7/12/07
	Rich Salvatore	Forced Out	44	22	2/24/07
Georgia	Jerome Vanderable	Falsification Policy 2-5	47	21	3/4/05
Hawaii	Sherrie Smith	Falsification Policy 2-5	51	21	12/16/04
	Edward Medeiros	Falsification Policy 2-5	49	13	1/24/05
	Rian Takeshita	Falsification Policy 2-5	44	13	7/24/06
Iowa	Steven Suterman	Falsification Policy 2-5	46	22	2/2/04
Maryland	Samuel Kudjordji	Falsification Policy 2-5	51	11	4/13/05
	Lani Gibbons	Falsification Policy 2-5	54	17	6/26/07
Mass.	Peter Fay	Policy 2-5	47	20	2/21/02
	Michael Kelley	Falsification Policy 2-5	48	20	10/7/05
	John Neil	Falsification Policy 2-5	50	22	3/07
	Kenneth Kumm	Falsification Policy 2-5	49	25	10/25/05

1	Michigan	Lizzie Middlebrook	Falsification Policy 2-5	51	20	7/5/05
2		Debroah Ridenhour	Falsification Policy 2-5	59	28	3/15/07
3	New Jersey	Larry Mungiello	Falsification Policy 2-5	64	18	8/31/05
4	New Mexico	Steven Goldberg	Called customers while delivering package	53	18	6/24/04
5						
6	New York	Maggie Dean	Accident	45	14	2/4/05
7	North Carolina	Sandra Compton	Falsification Policy 2-5	58	11	4/9/07
8		Michael Dill	Falsification Policy 2-5			
9	Ohio	Shryl Weideman	Displaced	46	11	10/17/05
10		Ronald Adams	Falsification Policy 2-5	48	18	7/18/05
11	Oklahoma	William Watkins	1 overlooked package	57	17	6/10/05
12		Edward Jones	Falsification Policy 2-5	50	15	8/30/05
13	Oregon	Belynda Ryles	Displaced; unable to lift 70 lbs after returning to work from an injury	47	22	9/24/04
14		Jeff McEllreth	Falsification Policy 2-5	52	24	9/22/06
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1	Tennessee	Michael Parks	Terminated for Stops per hour	48	20	9/25/04
2		Kenneth Adams	Falsification Policy 2-5	48	19	6/10/05
3		Ricki Stillwell	Falsification Policy 2-5	51	17	6/23/06
4		Verna Standback	Falsification Policy 2-5	52	24	8/11/06
5	Texas	Sandra Mason	Falsification Policy 2-5	47	23	6/12/05
6	Wisconsin	Robert Willette	Unreported Traffic Citation	45	22	11/14/06
7	Illinois	Bonnie Boston	Displaced	47	16	2/1/2003

11       8. Plaintiff Fred Hulac ("Hulac") is a resident of Santa  
 12 Rosa, California. He was born on March 27, 1952. FedEx employed  
 13 Plaintiff Hulac in California as a courier for more than twenty-  
 14 two years at the STSA station in this district.

15       9. FedEx terminated Plaintiff Hulac's employment on January  
 16 9, 2007 for using a timecard kept in his truck. When Plaintiff  
 17 Hulac pulled into the parking lot at FedEx station STSA after a  
 18 week of vacation on Tuesday, January 7, 2007, his wife called to  
 19 inform him that "Tammy from FedEx called" his home to inform him  
 20 that the new start time is 7:00am.

21       10. Plaintiff Hulac's typical Tuesday start times were  
 22 7:40am and 7:50am. On the morning of January 7, 2007 he left his  
 23 home at 6:45 am to arrive on time.

24       11. Plaintiff Hulac arrived at the station at "7:05am" not  
 25 wanting to be late. He rushed into the building, but there was no  
 26 time card left for him by managers. To sign in for the day he  
 27

1 grabbed a blank time card from his truck and marked it for a  
2 starting time of 7:05am.

3       12. Plaintiff Hulac left a post-it note on his manager's  
4 door explaining how he signed in for that day. Allegedly, the  
5 manager never saw the note.

6       13. Couriers under 40 years of age have used blank time  
7 cards kept in their vehicles and none of those couriers were  
8 terminated for using a blank time card.

9       14. Plaintiff Hulac never had a chance to inform managers  
10 of his time card entry when he returned to the station because all  
11 managers had left by 6:40pm and his cell phone battery was dead.  
12 He left another note on the door of his operations manager but she  
13 allegedly never saw it.

14       15. Hulac never falsified in his 22 year career as a  
15 courier. FedEx terminated Hulac 11 weeks before his 55<sup>th</sup> birthday  
16 when he could have vested in the retiree healthcare benefits  
17 program.

18       16. Managers knew Plaintiff Hulac would arrive at the  
19 station soon because dispatcher Tammy spoke with his wife minutes  
20 before his arrival. Managers did not leave a time card with his  
21 name on it for him, which forced Plaintiff Hulac to use any time  
22 card he had. He signed in giving the "new" start time he learned  
23 of minutes before he was to sign in.

24       17. FedEx used its policies to discriminate against  
25 Plaintiff Hulac and like employees. FedEx's policy of  
26 falsification, (Acceptable Conduct Policy 2-5) is applied in a  
27

1 discriminatory way to couriers, ramp transport drivers, service  
2 agent, handlers and operations managers 44 and older with 10 or  
3 more years of experience.

4       18. FedEx's Acceptable Conduct Policy 2-5 is vague and can  
5 be applied in any way a manager chooses. Older couriers increase  
6 station costs with higher hourly pay, overtime pay and more  
7 serious injuries. Headquarters informs managers to reduce station  
8 costs. Managers use Acceptable Conduct Policy 2-5, Best Practice  
9 and stops-per-hour to discriminate against older employees.

10      19. Managers also terminate couriers returning from medical  
11 leave or long-term disability. Managers remove the courier from  
12 his/her route and state the courier must take a route anywhere in  
13 the U.S. Couriers are offered routes for half their current pay  
14 in stations 500 miles away. Sarah Dancer moved her daughter to  
15 Texas from Memphis, Tennessee when she lost her route after an  
16 injury. She was forced to leave behind her sick husband.

17      20. Managers are motivated to terminate older employees,  
18 force them to quit or force to retire. FedEx pushes stations to  
19 reduce station costs and protect FedEx's "hours goal" or "FTE  
20 goals" set by executives at headquarters.

21      21. Managers adhere to the MOB/FOB strategies for management  
22 at FedEx provided to stations from headquarters. Managers'  
23 performance reviews have categories for MOB/FOB and for an  
24 evaluation of whether or not the manager is meeting the FTE goals  
25 set by headquarters.

26      22. Each of these policies discriminates against Plaintiffs

1 and other older employee because the goals for reducing station  
2 costs employ a strategy of applying Best Practice, stops-per-hour  
3 and other policies in a discriminatory way against older employees  
4 and in a non -discriminatory way toward employees under 40 years  
5 of age.

6 23. Appendix A lists couriers, service agents and an  
7 Operations Manager all discriminated against through FedEx's  
8 policies. All are 44 years of age or older and have worked at  
9 FedEx for 10 or more years.

10 24. Plaintiff Kathy Fingarson ("Fingarson") is a resident of  
11 Jenner, California. FedEx hired Plaintiff Fingarson on September  
12 1, 1988. Plaintiff Fingarson worked at the STSA station and is  
13 currently working at the NOTA station in this District. She was  
14 born on October 31, 1953.

15 25. Defendant schedules Plaintiff Kathy Fingarson and other  
16 couriers age 44 or older at the NOTA station for fewer hours than  
17 couriers under the age of 40. Fed Ex issued eight "Counselings",  
18 for Plaintiff Fingarson as a form of disciplinary action, placed  
19 in the Online Documented Counseling and Compliment "OLCC" PRISM  
20 system, although it did not take any disciplinary action against  
21 younger couriers for similar practices.

22 26. FedEx discriminates against couriers and other employees  
23 over 44 years of age with 10 or more years of experience with  
24 FedEx through policies developed at headquarters.

25 27. FedEx's discriminatory policies are Best Practice  
26 methods and Best Practice check-rides, stops-per-hour and hourly  
27

1 and fiscal goals set by headquarters.

2 28. Managers issue Performance Reminders or Warning Letters  
3 to couriers, ramp transport drivers, handlers, service agents and  
4 operations managers. If an employee accumulates three letters he  
5 can be terminated.

6 29. Couriers receive letters for not achieving stops per  
7 hour, which is a discriminatory policy. Managers often have young  
8 couriers literally "run" a route, falsify and skip lunch in  
9 violation of FedEx policies. The younger courier increases the  
10 number of stops per hour possible on a specific route by violating  
11 policies. When the senior courier returns managers contend that  
12 the senior courier must make the same number of stops per hour or  
13 more.

14 30. The senior courier has impossible "numbers" of stops per  
15 hour to make. He is then given an OLCC or letter for not making  
16 the new goal.

17 31. FedEx discriminates against the Plaintiffs employed by  
18 FedEx listed in Appendix B through FedEx policies. FedEx wants  
19 these employees to become so frustrated they quit. If they do not  
20 quit they will be fired, harassed or forced to retire early.

21 32. The Plaintiffs in Appendix B are still employed by  
22 FedEx, but seek an injunction for relief from FedEx's  
23 discriminatory practices.

24 33. Plaintiff William Stewart, employee number 32409, worked  
25 at the STSA FedEx station in Santa Rosa, California for twenty-  
26 three years. He was born on 3/27/1952. He worked 2209.45 total  
27

1 hours in 2004, 1759.03 hours in 2005 and 1431.36 hours in 2006.  
2 Fed Ex gave more hours to couriers under 40 years of age than to  
3 Plaintiff Stewart. Defendant placed him on indefinite suspension  
4 after he had an accident while working as a courier. Fed Ex then  
5 called him and told him to return to work the following Monday.

6 34. Defendant did not inform him of any business reason for  
7 suspending him and did not advise him of the findings of the FedEx  
8 investigation. He retired on 3/28/2007, because he reasonably  
9 believed that FedEx would terminate his employment, possibly for  
10 cause, if he did not do so.

11 35. Couriers forced to retire are listed in Appendix C.  
12 These couriers, based upon information and belief, reasonably  
13 believed FedEx would terminate them. None of these couriers  
14 reached 60 years of age with thirty years of experience with  
15 FedEx. Retiring before reaching 60 years of age and thirty years  
16 of employment has a negative impact on these couriers, monthly  
17 pension payment.

18 **NOTICE TO THE DEFENDANT OF ALLEGATIONS**

19 **OF AGE DISCRIMINATORY EMPLOYMENT PRACTICES**

20  
21 36. The Defendant FedEx has benefitted in notice of the  
22 allegations of discriminatory employment practices since 1997 when  
23 a charge number 15B970137 was filed by courier Ronald Clausnitzer.  
24 Gerald Freeman filed a charge with the EEOC and the Clearwater  
25 Human Relations Dept., in 1997. The EEOC charge number for Mr.  
26 Freeman is 15B960120 and the FEPA charge number is PCO#9607-02543.

1  
2       37. In 1997 Clausnitzer and four other couriers filed  
3 charges of age discrimination and alleged a nationwide pattern.

4       38. FedEx continues its discriminatory practices against the  
5 Plaintiffs and other older couriers, ramp transport drivers,  
6 service agents and operations managers.

7       39. Plaintiff Raul Armendariz received a right to sue letter  
8 on 12/21/2007. His charge number is 540-2007-01910.

9       40. Plaintiff Jeff McEllrath filed a charge against FedEx  
10 with the EEOC for age discrimination. He received a right to sue  
11 letter on 1/15/2008. The charge number is 551-2006-00517.

12       41. Plaintiff Michael Parks filed a charge against FedEx  
13 with the EEOC for age discrimination on 3/7/2007. The charge  
14 number is 494-2007-01495. He received a right to sue letter on  
15 12/28/2007.

16       42. Plaintiff Michael Breitenstein filed an age  
17 discrimination charge and retaliation charge with the EEOC in  
18 2007. His charge numbers are 437-2008-00197 and 22A-2007-04723.

19       43. Plaintiff Hulac filed his EEOC charge on 12/3/2007. The  
20 charge number is 550-2008-00613. He has not yet received his  
21 right to sue letter.

22       44. Plaintiff Fingarson filed a charge with the EEOC and  
23 cross-filed it with the California Department of Fair Employment  
24 and Housing on 1/14/2007. She has not yet received her right to  
25 sue letter.

26       45. Plaintiff Cedric Roane filed an age discrimination  
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1 charge with the EEOC in October 2007. He has not yet received his  
2 right to sue letter.

3 46. Plaintiff Sarah Dancer filed an age discrimination  
4 charge with the EEOC on 9/7/2007. She has not yet received her  
5 right to sue letter.

6 47. Plaintiff Wilma Goree filed a charge of age  
7 discrimination against FedEx on 8/30/2005 and received a right to  
8 sue letter on 8/30/2005. The charge number is 311-2005-01559.  
9 Plaintiff Goree filed a retaliation charge on 11/29/2006. The  
10 charge number is 564-2007-00294. She has not yet received a  
11 right to sue letter for the retaliation charge.

12 48. Plaintiff Kenneth Kumm filed a charge with the EEOC on  
13 11/28/2005, charge number 161-2005-00143. He has not yet received  
14 a right to sue letter from the EEOC.

15 49. Plaintiff Valentin filed a charge with the EEOC on  
16 January 24, 2008.

17 50. The following Plaintiffs received Right to Sue letters  
18 more than 90 days ago:

19 51. Plaintiff Kenneth Adams filed a charge with the EEOC on  
20 10/31/2005. The charge number is 250-2006-00229. Plaintiff Adams  
21 received a right to sue letter on 10/23/2006.

22 52. Plaintiff Richard Boyd filed a charge of age  
23 discrimination by FedEx with EEOC stating "I was forced to retire  
24 from my position as a driver." The charge number is 150-2004-  
25 00821. He received a right to sue letter on 6/21/2004.

26 53. Plaintiff Steven Goldberg filed an age discrimination  
27

1 charge against FedEx with the EEOC on 9/28/2004. He received a  
2 right to sue letter on 6/3/2005.

3 54. Plaintiff Sandra Mason filed an age discrimination  
4 charge on 3/4/2005. The charge number is 330-2005-02299. She  
5 received a right to sue letter.

6 55. Plaintiff Warren Goldman filed an age discrimination  
7 charge with the EEOC and cross filed the charge with Palm Beach  
8 Co. Off. of Eq1 Emplmt on 5/3/2004. Plaintiff Goldman's charge is  
9 # 400450 15MA400187. He received a right to sue letter.

10 56. Plaintiff Edward Jones filed a charge with the EEOC on  
11 10/3/2007. The charge number is 31B-2007-00226. He has not yet  
12 received a right to sue letter. Plaintiff Jones previously filed a  
13 charge on 8/30/2005. He received a right to sue letter on  
14 8/30/2005. The charge number is 311-2005-01466.

15 57. Plaintiff Esther Harrison, who has worked for FedEx  
16 since 1979, filed an age discrimination charge with the EEOC on  
17 10/26/2005. The charge number is 250-2006-00199. She received a  
18 right to sue letter on 7/6/2006.

19 58. Plaintiff Smith filed an age discrimination charge  
20 with the EEOC and the Hawaii Civil Rights Commission on October  
21 11, 2005. The charge number is 37B-A5-00154. She received a  
22 right to sue letter.

23 59. Plaintiff Jerome Vanderable filed an age discrimination  
24 charge with the EEOC on March 21, 2005. The charge number is 110-  
25 2005020-82. He received a right to sue letter.

26 60. Plaintiff William Watkins, III filed an age  
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1 discrimination charge for age discrimination with the EEOC on  
2 2/6/2006. The charge number is 172-2006-00459. He received a  
3 right to sue letter.

4 61. Plaintiff Suttermann filed an age discrimination charge  
5 with the Iowa Civil Rights Department in 2004. He received a  
6 right to sue letter.

7 62. Plaintiff Sarro filled an age discrimination charge  
8 with the EEOC, charge number 461A4386-401 15FA400504 on June 11,  
9 2004. He received a right to sue letter.

10 63. Plaintiff Middlebrook filed a charge with the EEOC on  
11 1/5/2006. She received a right to sue letter.

12 64. FedEx had 333 ADEA charges filed with the EEOC from 2001  
13 thru 2007 and only 1 had a successful conciliation.

14 65. FedEx harmed Plaintiffs in paragraphs 7-33 and listed in  
15 Appendix A, Appendix B and Appendix C, by the Defendant's  
16 discriminatory policies such as measuring stops-per-hour; Best  
17 Practice; P/FTE; MOB/POB strategies and others policies listed  
18 below.

19 **FACTS**

20  
21 66. Defendant employs tens of thousands of couriers,  
22 service agents, operations managers and ramp transport  
23 drivers(RTD's) throughout the United States.

24 67. Operations managers receive hourly pay when hired. They  
25 earn a salary only after years as an operations manager.

26 68. FedEx Senior Managers, who make all final decisions for  
27

1 a station, must "make sound financial decisions which positively  
2 affect the performance of the department/district/Company." These  
3 decisions have a disparate impact upon Plaintiffs and those  
4 similarly situated.

5 69. Defendant FedEx's headquarters consistently influences  
6 station managers' financial decisions for their stations.

7 70. Managers must follow FedEx corporate policies developed  
8 at headquarters by applying Management by Objectives/Performance  
9 by Objectives ("MOB/POB") strategies.

10 71. In 1994 FedEx senior managers, trained by management at  
11 headquarters, began implementing Best Practice Pays "BPP".

12 72. FedEx headquarters gave senior managers monthly budgets.  
13 Plaintiffs, and similarly situated employees received bonus pay  
14 for applying "Best Practice."

15 73. FedEx no longer has managers BPP but maintains a Best  
16 Practice "BP" policy. The BP policy harmed and may continue to  
17 harm Plaintiffs and similarly situated older employees of FedEx by  
18 requiring couriers and other older employees to meet goals, such  
19 as, stops-per-hour for couriers, a measure that has been  
20 administered by FedEx in an age discriminatory way.

21 74. BP negatively impacts Plaintiffs and similarly situated  
22 employees economically by lowering their performance reviews,  
23 reducing income and other discriminatory practices.

24 75. Managers are trained by headquarters in BP methods and  
25 ride along with couriers on a "Check Ride" to determine the number  
26 of packages a courier's route should deliver per hour, or what the  
27

1 courier's "stops-per-hour" should be.

2       76. Upon information and belief Defendant FedEx  
3 disproportionately increased the stops per hour for couriers 44  
4 and older, as compared to those for couriers under 44 years of  
5 age.

6       77. FedEx has reduced the work hours for the Plaintiffs set  
7 forth in Appendix A, Appendix B and Appendix C who are 44 years of  
8 age or older with 10 or more years of experience with FedEx as a  
9 couriers, handlers, ramp transport drivers, service agents,  
10 operations managers or other hourly employees working in the U.S.

11       78. On check-rides managers "write-up" older couriers for  
12 not wearing the "right color socks" or not "walking-briskly."  
13 When managers write-up couriers or increase couriers' stops-per-  
14 hour to an unattainable goal managers are applying FedEx's  
15 discriminatory policies against Plaintiffs and similarly situated  
16 older couriers.

17       79. Senior Managers issue discipline selectively to older  
18 operations managers; that is, those 44 years of age and older.

19       80. Managers issue discipline to older couriers, ramp  
20 transport drivers and service agents 44 and over more frequently  
21 than those under 44 years of age.

22       81. FedEx employees 44 and over are terminated for  
23 "falsification" while younger couriers perform the same duties  
24 without penalty.

25       82. FedEx issues to older couriers, ramp transport drivers,  
26 service agents and operations managers "Counselings", Warning

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1 Letters or Performance Reminders. A younger courier, ramp  
2 transport driver, service agent or operations manager who enters  
3 information in reports is less likely to receive a "Counseling",  
4 Warning Letters or Performance Reminders for entering inaccurate  
5 reports.

6 83. Hourly employees, including couriers, ramp transport  
7 drivers, service agents and operations managers, may be terminated  
8 when there are three such letters in his/her file.

9 84. "Counselings" from management are recorded in writing or  
10 electronically in the FedEx OnLine Documented Compliment and  
11 Counseling PRISM system.

12 85. The Defendant FedEx issues "Counselings" to couriers 44  
13 and older with ten years of experience at four times the rate that  
14 "Counselings" are issued to couriers under 40 years of age with  
15 ten years of experience.

16 86. Upon information and belief, Plaintiffs reasonably  
17 believe that the Defendant FedEx uses BP, and Stops-Per Hour to  
18 compel and encourage older, experienced couriers and other  
19 employees to quit or retire from their employment with FedEx  
20 before they attain years of service required for full retiree  
21 health benefits.

22 87. Upon information and belief, Plaintiffs reasonably  
23 believe FedEx wants them to quit or be terminated before they  
24 reach 65 years of age or older with more than twenty years of  
25 experience.

26 88. FedEx's headquarters issues a fiscal formula, the  
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1 Permanent/Full-Time Equivalency (P/FTE), to industrial engineers  
2 and senior managers at each station.

3 89. Headquarters issues the P/FTE formula for stations to  
4 lower the station's costs while performing the same tasks.

5 90. In the P/FTE formula, headquarters issues the number of  
6 hours each station has to reduce the costs of its older couriers,  
7 ramp transport drivers and other warehouse employees.

8 91. After receiving the FTE goal from headquarters FedEx  
9 through its managers allocates hours to their employees in a way  
10 that harms its older, more experienced couriers and other hourly  
11 employees.

12 92. FedEx evaluates its station managers based on whether or  
13 not the station adhered to the P/FTE's issued from headquarters  
14 and continually lowered station costs.

15 93. Under the FedEx policy of P/FTE, FedEx rewards managers  
16 who diminish the hours worked by older couriers, ramp transport  
17 drivers, handlers, operations managers to reduce and service  
18 agents to reduce the station's costs. This policy harms older  
19 employees but rewards 95 employees under 44 by increasing their  
20 hours and pay. Managers receive a bonus for adhering to the P/FTE  
21 hrs given to station from FedEx headquarters.

22 94. In 2004 and 2005 managers' performance was reviewed for  
23 effectiveness with P/FTE. The category is "Results for Single  
24 Most Critical Work Objective."

25 95. Managers may be terminated for not meeting "FTEs." The  
26 FedEx FTE policy has a negative economic impact on employees 44  
27

1 and older.

2 96. From 2003-2005 FedEx terminated couriers 40 years of age  
3 and older with 10 or more years of experience at a higher rate  
4 compared couriers under 40 years of age.

5 97. Under the policies first adopted in 1994, FedEx focuses  
6 on its older couriers, and other hourly employees, and gives  
7 intense scrutiny to those injured on the job or who otherwise  
8 require medical absence and FedEx discharges such older employees  
9 disproportionately and also induces them to leave its employment.

10 98. Couriers, ramp transport drivers and service agents who  
11 are injured, for more than 90 days become "displaced employees"  
12 and lose their routes or duties and may be terminated if they do  
13 not find another route or position anywhere within FedEx.

14 99. FedEx has not treated younger couriers, ramp transport  
15 drivers, operations managers and service agents, who have been  
16 injured or who have otherwise required medical absences, with such  
17 scrutiny.

18 100. Injured older couriers, ramp transport drivers or  
19 service agents increase station costs and managers frequently  
20 displace them in order to lower station costs.

21 101. FedEx terminated employees 44 years of age and older for  
22 the same kind of conduct as younger workers who are not  
23 terminated.

24 102. Under the policies and practices described above,  
25 FedEx has given preference to younger, less experienced couriers  
26 in starting times, assignments of production goals, overtime  
27

1 assignments, route assignments, discipline, performance  
2 evaluations and other terms and conditions of employment as  
3 compared to older couriers, including Plaintiffs.

4 103. Employment practices that discriminate against older  
5 couriers, ramp transport drivers and service agents and favor  
6 younger couriers, ramp transport drivers and service agents are  
7 the prevailing pattern and practice of FedEx in California. Upon  
8 information and belief, FedEx has continued to follow employment  
9 practices throughout the United States that favor younger couriers  
10 at the expense of other older hourly employees.

11 104. As part of its compensation to couriers, ramp transport  
12 drivers and service agents, FedEx provides a health plan that  
13 assures assistance to the employee in the payment of medical  
14 expenses, drug prescriptions, and dental expenses. FedEx provides  
15 a Medical Absence Pay and Short Term and Long Term disability  
16 benefits if a courier is sick or injured and unable to work.

17 105. FedEx provides a Portable Pension Plan. FedEx expects  
18 their pension cost to FedEx to increase in 2008. However, the  
19 FedEx retiree healthcare costs decreased by 18 million dollars  
20 from 2006 to 2007 according the 2007 FedEx Annual Report.

21 106. The reduction in retiree healthcare costs harms  
22 Plaintiffs and similarly situated older employees who may be  
23 terminated and therefore will not receive retiree healthcare  
24 funded in whole or in part by FedEx.

25 107. Upon information and belief, FedEx has adopted  
26 administrative policies in a discriminatory manner against older  
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1 couriers, ramp transport drivers, operations managers and service  
2 agents to elimination these older workers from its work force,  
3 which would reduce its labor costs and the costs of its health and  
4 medical benefits, retirement program, and other employee benefit  
5 plans as seen in the reduction in retiree health benefits.

6 108. Unless restrained by order of this Court, Defendant will  
7 continue to pursue policies and practices that cause Plaintiffs  
8 and other similarly situated older couriers to suffer irreparable  
9 harm.

10 **CLAIM ONE**

11 **For Discrimination in Violation of the ADEA**  
12 **(On Behalf of All Plaintiffs and the Class)**

13 109. Plaintiffs reassert and reallege paragraphs 1 through  
14 109, inclusive, and fully set forth and incorporate said  
15 paragraphs herein by reference.

16 110. Plaintiffs are terminated, retired or employed by  
17 the Defendant FedEx and are similarly situated to the class of  
18 older couriers, ramp transport drivers and service agents age 40  
19 or older.

20 111. The employment practices of FedEx harmed forty-seven  
21 Plaintiffs, paragraphs 6,7 and see chart above and Appendix A, by  
22 being terminated from their employment with FedEx because of  
23 FedEx's unified policy, plan or scheme of discrimination.

24 112. A unified policy, plan or scheme of discrimination is  
25 not required for Plaintiffs to satisfy the more liberal "similarly  
26 situated" requirement of 29 U.S.C. § 216b. Plaintiffs are

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1 similarly situated when they have similar jobs and perform similar  
 2 conduct. All Plaintiffs in Appendix A, B and C are similarly  
 3 situated in all material respects.

4 113. The Plaintiffs are Couriers, Ramp Transport Drivers  
 5 (RTD), Service Agents or Handlers. They perform similar tasks and  
 6 similar conduct.

7	Job	Evaluated by BP	Delivers Packgs.	Pulls from Belt
8	Courier	YES	YES	YES
9	RTD	YES	YES	YES
10	Handlers	YES	YES (can be couriers and handlers)	YES
12	Ops. Manager	YES	YES	YES
13	Service Agents	YES	No	YES

114. Defendant FedEx's employment practices harmed Plaintiffs  
 Boyd, Stewart, Perkins, Henning, Fuller, Horning and Sarro because  
 they accepted early retirements rather than remaining employed  
 with the Defendant FedEx until they were 62 years of age or older.  
 Plaintiff Mackenzie was harmed by FedEx's employment practices and  
 accepted normal retirement rather than maintaining full-time  
 employment with FedEx.

115. Thirty-four Plaintiffs, in Appendix B, who are employed  
 by FedEx are harmed by the ongoing employment practices of FedEx  
 which threaten their employment.

116. Plaintiffs and the class of similarly situated older  
 couriers, ramp transport drivers and service agents were all well-  
 qualified to perform the job responsibilities. Each performed his  
 or her job in a satisfactory manner.

1 117. The employment practices of FedEx described above in  
2 paragraphs 1 through 156 harmed/harms Plaintiffs and the class of  
3 similar situated older couriers, ramp transport drivers and  
4 service agents while favoring younger couriers, ramp transport  
5 drivers and service agents who are paid less per hour. Also FedEx  
6 believes couriers, ramp transport drivers and service agents 40  
7 and older with 10 or more years of experience are more costly when  
8 they are injured because that raises station costs FedEx through  
9 the P/FTE forces stations to lower station costs by directly  
10 harming older couriers, ramp transport drivers and service agents.  
11 The practices so described are not based upon a reasonable factor  
12 other than age(RFOA) or bona fide occupational  
13 qualifications(BFOQ) .

14 118. Defendant has knowingly and purposefully engaged in age  
15 discriminatory practices with the full knowledge that in so doing  
16 it was discriminating against its older couriers, ramp transport  
17 drivers and service agents without regard for the rights of those  
18 couriers under the ADEA.

19 119. Defendant has followed the age discriminatory employment  
20 practices described above and has shown reckless disregard for the  
21 rights of its older couriers, ramp transport drivers and service  
22 agents under the ADEA and under relevant provisions of state laws  
23 prohibiting age discrimination in employment.

24 120. Defendant has not asserted a reasonable factor other  
25 than age as a justification for its age discriminatory practices.  
26  
27  
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**CLAIM TWO**

**For Violation of Cal. Gov. Code § 12940**

(On Behalf of the Class of California Residents)

4 121. Plaintiffs reassert and reallege paragraphs 1 through  
5 109, inclusive, and if fully sets forth and incorporates said  
6 paragraphs herein by reference.

7        122. Section 12940 of California's Government Code makes it  
8 unlawful:

9       123.       For an employer, because of the . . . age . . . of  
10      any person . . . to discharge the person from employment . .  
11      . or to discriminate against the person in compensation or in  
12      terms, conditions, or privileges of employment.

13 124. There are thousands of couriers, ramp transport drivers  
14 and service agents employed by Defendant in the state of  
15 California. On information and belief, at least several hundred  
16 of these couriers, ramp transport drivers and service agents are  
17 40 or older.

18 125. The practices alleged in paragraphs 12 through 28 are  
19 unlawful under California's Fair Employment and Housing laws, Cal.  
20 Gov. Code § 12940. Plaintiffs Hulac, Fingarson, Spinks, Stewart  
21 and Fejardo are all over age 40 and seek to represent the class of  
22 couriers over 40 years of age who work in California.

23 126. Plaintiff Fingarson has exhausted the administrative  
24 requirements of California's Fair Employment and Housing laws.

25 127. The claims of Plaintiffs Hulac, Fingarson, Spinks,  
26 Stewart and Fejardo and of other older couriers. ramp transport

1 drivers and service agents share common questions of fact and law,  
2 including whether Defendant intentionally engaged in a pattern or  
3 practice of age discrimination against its older couriers, ramp  
4 transport drivers and service agents by implementing company-wide  
5 employment practices that were intended to and did result in  
6 driving older couriers, ramp transport drivers and service agents  
7 out of their employment; and whether Defendant engaged in policies  
8 and practices that discriminated against couriers, ramp transport  
9 drivers and service agents over age 40 that were not required by  
10 or consistent with business necessity.

11       128. The claims of Plaintiffs Hulac, Fingarson, Fejardo,  
12 Stewart and Spinks are typical of the age discrimination claims of  
13 the class they seek to represent. Plaintiffs are current couriers  
14 who have been harassed and discriminated against in the terms and  
15 conditions of their employment. Plaintiffs all claim that  
16 Defendant intentionally engaged in a pattern or practice of age  
17 discrimination against older couriers, ramp transport drivers and  
18 service agents by implementing company-wide plans that were  
19 intended to and did drive older couriers, ramp transport drivers  
20 and service agents out of the company disproportionately. The  
21 factual issues concerning liability under the state law claim are  
22 identical or similar to the issues concerning liability under the  
23 ADEA.

24       129. Plaintiffs are adequate representatives of the class  
25 they seek to represent because they are not and have never been  
26 supervisors or members of management. There are no conflicts of  
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1 interest between them and the class they seek to represent. In  
2 addition, Plaintiffs have retained experienced counsel with a  
3 multi-state practice in age discrimination matters, collective  
4 actions, and other employment discrimination matters.

5 130. The actions taken against Plaintiffs and other older  
6 couriers, ramp transport drivers and service agents constitute  
7 discrimination under Cal. Gov. Code § 12940.

8 131. As a direct and proximate result of Defendant's  
9 deliberate, intentional, and unlawful violation of Plaintiffs'  
10 statutory rights, Defendants wrongfully caused Plaintiffs and  
11 other older couriers, ramp transport drivers and service agents to  
12 lose income and benefits and suffer humiliation and personal  
13 embarrassment.

14 132. The acts committed by Defendant were committed with  
15 oppression, fraud, and malice and resulted in emotional distress  
16 to Plaintiffs and other older couriers, ramp transport drivers and  
17 service agents.

18 133. Defendant has not asserted a reasonable factor other  
19 than age as a justification for its age discriminatory practices.  
20 Defendant has no bona fide occupational qualification or business  
21 necessity to justify the discrimination against its older  
22 couriers, ramp transport drivers and service agents.

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## PRAYER FOR RELIEF

2 Plaintiffs pray for orders requiring the Defendant to notify,  
3 in a form to be approved by the Court, all current and former  
4 couriers, ramp transport drivers and service agents 40 and over  
5 with 10 or more years of experience and who had reached the age of  
6 40, before their employment with Federal Express was terminated,  
7 of the allegations in this lawsuit and the right to participate in  
8 this suit; and

9 Plaintiffs pray for an Order directing the issuance of Notice  
10 under the ADEA to couriers, ramp transport drivers and service  
11 agents certification age 40 and older of the allegations of age  
12 discrimination made with this suit and their right to Opt into  
13 this suit; a class certification of FedEx employees employed in  
14 California; and

15 Plaintiffs pray for an order preliminarily and permanently  
16 enjoining Defendant and its officers, agents, employees,  
17 successors and all persons from engaging in employment practices  
18 that discriminate against older couriers, ramp transport drivers  
19 and service agents on grounds of age, and from following neutral  
20 employment practices that have a discriminatory impact against  
21 older couriers, ramp transport drivers and service agents, unless  
22 the employer can show that such practices are based upon a  
23 "reasonable factor other than age" within the meaning of the ADEA.  
24 Such an order should enjoin the Defendant from:

25 1) treating older couriers, ramp transport drivers and  
26 service agents less favorably than younger couriers in the

1 allocation of routes, start times, overtime opportunities,  
2 discipline and other terms and conditions of employment;  
3 2) terminating or disciplining older couriers, ramp transport  
4 drivers and service agents who are absent from work because  
5 of injuries or other medical problems while they are  
6 recovering from same, in the absence of solid medical  
7 evidence that they are disabled from performing the duties of  
8 a courier, ramp transport drivers or service agents;  
9 3) treating older couriers, ramp transport drivers and  
10 service agents less favorably than younger couriers ramp  
11 transport drivers and service agents in discipline and other  
12 terms and conditions of employment;  
13 4) following employment practices such as BPP and Stops-per-  
14 hour, issuing "Counselings" and other practices that have a  
15 discriminatory impact against older couriers, ramp transport  
16 drivers and service agents unless this Court determines that  
17 any such practice is based upon a reasonable factor other  
18 than age;  
19 5) failing or refusing to reinstate older couriers, ramp  
20 transport drivers and service agents whose employment was  
21 terminated by Defendant because of their age or because of  
22 unlawful practices by Defendant which resulted in their  
23 separation from employment by Defendant not based upon a  
24 factor other than age;  
25 6) retaliating against any couriers, ramp transport drivers  
26 and service agents who have opposed any discriminatory

1 policies or practices, or who have made a charge, testified,  
2 assisted, or participated in any manner in an investigation,  
3 proceeding, or litigation.

4 Plaintiffs further pray for an award of damages to them and  
5 plaintiffs who Opt into this suit for:

- 6 1) loss of income and the value of fringe benefits as  
7 determined by the jury; including the loss of future earnings  
8 for those couriers, ramp transport drivers and service agents  
9 who have lost their positions with Defendant until such time  
10 as they are reinstated or offered reinstatement;
- 11 2) an award of liquidated damages as determined by the jury;
- 12 3) an award of punitive damages for violations of FEHA as  
13 determined by the jury;
- 14 4) an award of compensatory damages for violations of FEHA as  
15 determined by the jury;
- 16 5) pre-judgment interest in an amount to be determined;
- 17 6) costs of litigation, including expenses and attorneys'  
18 fees and expert witness fees; and
- 19 7) such other relief as may be just.

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3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby demand a jury trial as provided by Rule  
5 38(a) of the Federal Rules of Civil Procedure.

6 DATED: March 19, 2008

7 ROSE & ROSE, P.C.

8 Respectfully submitted,

9   
10 David L. Rose  
11 Earlene W. Rosenberg  
12 Attorneys for PLAINTIFFS

**APPENDIX A**

<b>TERMINATED</b>		<b>Station</b>	<b>Termination Date</b>
<b>Name</b>			
1. Fred Hulac		STSA	3/27/52
2. Glendora Spinks		POCA	3/18/53
3. Raul Armendariz		FLGA	10/19/56
4. Kelly Martinez		FULA	9/26/58
5. Lori Bernstein		FNLA	7/21/61
6. Delno Clark		BDLA	3/4/59
7. Stephen Megru		SUAA	2/11/59
8. John Pellegren		FMYA	12/21/53
9. Peggy Whitman		FMYA	4/22/61
10. Romas Jasiulevicius		CLWA	4/10/1962
11. Jerome Vanderable		NCQA	6/25/57
12. Rian Takeshita		JHMDA	9/15/62
13. Sherrie Smith		OGGA	12/14/53
14. Edward Medeiros		OGGA	12/4/55
15. Steven Suterman		Cedar Rapids	8/2/57
16. Jeffrey Long		GAIA	10/1/62
17. Samuel Kudjordji		GAIA	8/10/53
18. Lani Gibbons		FMEA	5/31/53
19. Peter Fay		AYE	1/28/55
20. Michael Kelley		OWDA	12/26/56
21. John Neil		OWDA	2/23/57
22. Kevin Kumm		CEFA	8/7/56
23. Lizzie Middlebrook		DTTA	3/10/54
24. Deborah Ridenhour		DTTA	5/1/48
25. Caroline O'Brien		MKCA	2/28/62
26. Larry Mungiello		TEBA	6/13/41
27. Steven Goldberg		ABQA	8/16/50
28. Maggie Dean		HTOA	9/13/59
29. Sandra Compton		HKYA	11/11/48
30. Michael Dill		HKYA	9/20/61
31. Shryl Weideman		TOL	7/1/59
32. Ronald Adams		DAYA	1/15/57
33. William Watkins, III		PITA	8/4/47
34. Edward Jones		TULA	12/4/54
35. Jeff McEllrath		PDXA	1/10/54
36. Belinda Ryles		PDXA	4/13/57
37. Michael Parks		BNAA	7/15/58
38. Earl Yarborough		NQAA	12/30/63
39. Verna Stanback		NQAA	11/22/53
40. Kenneth Adams		NQAA	10/2/56
41. Esther Harrison		HKA	10/26/57
42. Sandra Mason		HYBA	9/16/55
43. Ricki Stilwell		WALA	12/20/54
44. Kevin Chapman		DCAA	9/8/62
45. Robert Willette		ATWA	8/23/61

**APPENDIX B****CURRENTLY EMPLOYED EXPERIENCING  
ONGOING DISCRIMINATION**

<b>Name</b>	<b>Station (State)</b>	<b>Date of Birth</b>
1. Kathy Fingarson	NOTA (CA)	10/31/53
2. Dianna Fejardo	POCA (CA)	10/6/52
3. Debra Ferrell	POCA (CA)	2/23/56
4. Linnea Edwards	SRU (CA)	9/9/56
5. Debbie Johnson	FULA (CO)	3/20/59
6. Denver Kushihashi	BKFA (FL)	7/31/63
7. Maria Pleigo	COIA (FL)	10/25/47
8. Naja Welch	MLBA (FL)	7/8/66
9. Estate of Dwight Todd	SPIA (HI)	6/27/53
10. Victor Lanzotti	SPIA (IL)	3/5/47
11. Bonnie Boston	SPIA (IL)	10/2/54
12. Barry Barnette	MZZA (OH)	8/3/60
13. Elizabeth Tucker	MZZA (OH)	8/12/54
14. Richard Casey	BLMA (NJ)	3/1/61
15. John Osowski	BLMA (NJ)	1/1/58
16. Dennis DeNeeza	BLMA (NJ)	8/16/51
17. Richard Glock	BLMA (NJ)	2/20/54
18. Michael Addeo	BLMA (NJ)	5/11/53
19. Francis Phair	BLMA (NJ)	3/3/59
20. Donald Meyer	BLMA (NJ)	8/5/63
21. Frank Sarro	BMLA (NJ)	3/10/43
22. Rocco Notarfrancesco	GMVA (NJ)	3/19/57
23. David Velenger	PRIA (NJ)	12/14/58
24. Robert Chabak	WWDA (NJ)	5/10/60
25. Mike Bruno	WWDA (NJ)	3/23/53
26. Michael Breitstein	DAYA (OH)	8/10/62
27. Ellen Brouse	MRIA (OR)	7/26/50
28. Zeno Latin	VGTA (OR)	7/17/57
29. Cedric Roane	USCA (SC)	11/17/51
30. Sarah Dancer	MMR (TX)	12/13/53
31. Tom Schulz	ATWA (WI)	12/7/51

**APPENDIX C****FORCED TO RETIRE**

<b>Name</b>	<b>Station (State)</b>	<b>Date of Birth</b>
1. William Stewart	STSA (CA)	3/27/52
2. Linnea Edwards	SRU (CA)	9/9/56
3. Richard Boyd	SWFA (FL)	11/16/48
4. Frank Sarro	BMLA (FL)	3/10/43
5. Curley Fuller	PDXA (FL)	10/6/43
6. Paul Horning	GAIA (MD)	3/21/50
7. Rita Perkins	FCMA (MI)	11/29/51
8. D. Ken Mackenzie	WRIA (NJ)	10/8/39
9. David Henning	WWDA (NJ)	8/11/52